

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMIE RYAN OVERSTREET,  
Plaintiff,  
v.  
M. WHITE, et al.,  
Defendants.

No. 2:20-cv-0633 AC P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are plaintiff's motions for preliminary injunction (ECF No. 53), for a way to produce and receive discovery (ECF No. 54), and to compel discovery (ECF No. 60), as well as defendant's motion to modify the pretrial motions deadline (ECF No. 69). Also before the court are plaintiff's notices regarding his personal safety and active hunger strike. ECF Nos. 70, 71.

I. Motion for Preliminary Injunction

Plaintiff has filed a motion for preliminary injunction in which he requests that the court order California Department of Corrections and Rehabilitation (CDCR) staff to locate and deliver a copy of the Federal Civil Rules of Civil Procedure that was ordered for plaintiff by a friend. ECF No. 53. He asserts that the book has arrived at the prison but has yet to be delivered to him despite it having been signed for over three months ago. Id. at 2. Plaintiff has also filed several

1 affidavits alleging that his mail is being mishandled. ECF Nos. 54-56. He requests “a clear and  
 2 direct way to produce and receive further documentary discovery” and some kind of tracking  
 3 system. ECF No. 54 at 3.

4 “A plaintiff seeking a preliminary injunction must establish [(1)] that he is likely to  
 5 succeed on the merits, [(2)] that he is likely to suffer irreparable harm in the absence of  
 6 preliminary relief, [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction is  
 7 in the public interest.” Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (citations  
 8 omitted). If the moving party cannot show a likelihood of success on the merits, “serious  
 9 questions going to the merits’ and a balance of hardships that tips sharply towards the plaintiff  
 10 can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a  
 11 likelihood of irreparable injury and that the injunction is in the public interest.” All. for the Wild  
 12 Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

13 Plaintiff has failed to demonstrate he is likely to suffer irreparable harm. His motions and  
 14 affidavits identify only three instances in which mail was allegedly delayed or lost,<sup>1</sup> and there is  
 15 no evidence that these incidents were the result of deliberate interference with plaintiff’s mail.  
 16 Though frustrating, lost and delayed mail is not unheard of, and based on the numerous filings  
 17 received by the court it appears that most of plaintiff’s mail is being processed in a timely  
 18 manner.

19 Additionally, a district court has no authority to grant relief in the form of a preliminary  
 20 injunction where it has no jurisdiction over the parties. Ruhrgas AG v. Marathon Oil Co., 526  
 21 U.S. 574, 584 (1999) (“Personal jurisdiction, too, is an essential element of the jurisdiction of a  
 22 district . . . court, without which the court is powerless to proceed to an adjudication.” (alteration  
 23 in original) (citation and internal quotation omitted)). Plaintiff seeks relief based on the conduct

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 25 <sup>1</sup> Plaintiff has not received a copy of the Federal Rules of Civil Procedure which was signed for  
 26 by prison staff on January 27, 2022 (ECF No. 53); defendant’s counsel did not receive discovery  
 27 responses plaintiff mailed on February 28, 2022 (ECF No. 55 at 3); and plaintiff’s April 5, 2022  
 28 affidavit was originally sent to the court on April 10, 2022, but was returned to him eighteen days  
 later for insufficient postage (ECF No. 55 at 1, 3). Plaintiff’s attempts at re-mailing the discovery  
 responses and affidavit were both successful. See ECF No. 58 (acknowledging receipt of  
 discovery responses); ECF No. 54 (April 5, 2022 affidavit).

1 of non-defendant prison officials who he claims are interfering with his mail. The court does not  
2 have jurisdiction over those individuals unless plaintiff provides facts showing that they are  
3 acting “in active concert or participation” with the defendants. Fed. R. Civ. P. 65(d)(2); Zenith  
4 Radio Corp. v. Hazeltine Rsch., Inc., 395 U.S. 100, 112 (1969) (“[A] nonparty with notice cannot  
5 be held in contempt until shown to be in concert or participation.”)). Plaintiff has failed to  
6 provide any such facts.

7 For these reasons, it will be recommended that the motions for injunctive relief be denied.

8 II. Motion to Compel

9 Plaintiff has filed a motion to compel responses to interrogatories and requests for  
10 production on the ground that defendant has objected to the requests as untimely and refused to  
11 provide responses. ECF No. 60. Defendant opposes the motion. ECF No. 62.

12 The deadline for plaintiff to serve written discovery requests was March 30, 2022. ECF  
13 No. 42. Plaintiff asserts that his requests were timely delivered to prison staff for mailing on  
14 March 27, 2022, and that defendant has refused to respond to the requests on the ground that they  
15 were untimely because the envelope was signed by correctional staff on March 31, 2022. ECF  
16 No. 60. Plaintiff claims that while staff are supposed to sign and date the envelopes at the time of  
17 receipt, sometimes they take the mail back to the office where they sign and date all the envelopes  
18 collected at one time. Id. at 1-2. He speculates that his mail was “forgotten & left in the office by  
19 staff.” Id. at 2.

20 Defendant opposes the motion on the ground that his objection to the timeliness of the  
21 requests was proper. ECF No. 62. He argues that while the discovery requests were  
22 accompanied by a proof of service dated March 27, 2022, the envelope was signed by  
23 correctional staff on March 31, 2022. Id. at 2. According to prison mailing procedures, the  
24 envelope is supposed to be signed by correctional staff at the time they receive it from the  
25 prisoner, making the requests untimely. Id.

26 Plaintiff does not dispute that the mailing procedure outlined by defendant is the  
27 procedure that is supposed to be followed by prison staff. Instead, he argues that prison staff do  
28 not always follow policy and sometimes collect mail in bulk and then log and sign it in the office.

1 ECF No. 60 at 1-2; ECF No. 66 at 5. Moreover, as plaintiff correctly points out, while defendant  
2 has provided a declaration from the litigation coordinator outlining the mail policy and how mail  
3 is supposed to be processed, it does not address the question whether officers actually followed  
4 the policy on the dates in question. Nor does the declaration establish that the litigation  
5 coordinator has the necessary personal knowledge to attest to these facts. Although plaintiff does  
6 not explicitly state that the officer collected his mail on March 27, 2022, without signing and  
7 dating the envelope at the time it was collected, he does aver that he handed his discovery  
8 requests over on that date. Defendant's evidence regarding the policy that is supposed to be  
9 followed is not sufficient to overcome plaintiff's sworn representation that he timely handed over  
10 his discovery requests for mailing on March 27, 2022. The motion to compel will therefore be  
11 granted and defendant will be required to respond to the discovery requests, subject to any  
12 objections he may raise on grounds other than untimeliness.

### 13 III. Motion to Modify Pretrial Motions Deadline

14 Defendant has filed a motion seeking to extend the dispositive motions deadline by sixty  
15 days to allow further attempts to settle this case. ECF No. 69. Plaintiff's declaration regarding  
16 his safety also indicates that he is interested in attempting to settle this case. ECF No. 70.  
17 Because plaintiff's motion to compel is being granted, the dispositive motions deadline will be  
18 vacated and discovery will be re-opened for the limited purpose of addressing plaintiff's  
19 outstanding discovery requests. Because the parties have both represented that they are interested  
20 in pursuing settlement, the deadlines for completing discovery will be set out far enough to allow  
21 that parties an opportunity to settle the case. The dispositive motions deadline need not be reset  
22 at this time.

### 23 IV. Plaintiff's Notices Regarding Prison Conditions

24 Plaintiff has filed two notices alleging safety concerns related to his housing and  
25 movement, and stating that he is on a hunger strike. ECF Nos. 70, 71. Although it appears that  
26 prison staff are already aware of plaintiff's concerns and his hunger strike, defendant's counsel  
27 will be directed to forward plaintiff's notices to appropriate individuals at the prison. However,  
28 this action is neither a substitute for the prison grievance process nor an appropriate place to

1 address alleged violations of plaintiff's rights that are not related to the claims in the complaint.  
2 This court will not address further threats of self-harm by plaintiff. If plaintiff seeks to pursue  
3 claims regarding his housing and safety, he must initiate a separate action. Plaintiff is advised  
4 that based on the information he has provided, any such action would need to be filed in the  
5 Fresno Division of this court because the alleged violations occurred at Kern Valley State Prison.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff's motion to compel (ECF No. 60) is GRANTED.

8 2. Discovery is re-opened for the limited purpose of resolving the outstanding discovery  
9 matters as set forth below.

10 3. Defendant shall respond to plaintiff's March 27, 2022 interrogatories and requests for  
11 production within sixty days of the service of this order. If necessary, plaintiff may file a motion  
12 to compel within eighty days of the service of this order.

13 4. The July 22, 2022 dispositive motions deadline is VACATED and will be re-set, as  
14 necessary, upon resolution of the outstanding discovery matters.

15 5. Defendant's motion to extend the dispositive motions deadline (ECF No. 69) is  
16 DENIED as moot.

17 6. The Office of the Attorney General and Deputy Attorney General Zachary Glantz  
18 shall ensure plaintiff's notices (ECF Nos. 70, 71) are forwarded to the appropriate staff at the  
19 institution at which plaintiff is incarcerated.

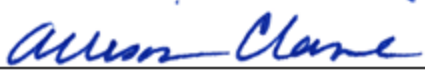
20 7. The Clerk of Court randomly assign a United States District Judge to this action.

21 IT IS FURTHER RECOMMENDED that plaintiff's motions for injunctive relief (ECF  
22 Nos. 53, 54) be DENIED.

23 These findings and recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
25 after being served with these findings and recommendations, plaintiff may file written objections  
26 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
27 and Recommendations." Any response to the objections shall be filed and served within fourteen  
28 days after service of the objections. Plaintiff is advised that failure to file objections within the

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
2 F.2d 1153 (9th Cir. 1991).

3  
4 DATED: July 21, 2022

  
5 ALLISON CLAIRE  
6 UNITED STATES MAGISTRATE JUDGE

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